

THAMMU PANDURANGA RAO & ANR.

v.

STATE OF ANDHRA PRADESH  
(Criminal Appeal No. 1132 of 2009)

APRIL 26, 2013

[P. SATHASIVAM AND M.Y. EQBAL, JJ.]

*Penal Code, 1860 :*

*ss.304 (Part II), 323 and 325 - Prosecution for causing death and injuries - Conviction by trial court u/ss. 304, 323 and 325 - High Court modified the conviction u/s. 304 to 304 (Part II) and reduced the sentence - On appeal, held: High Court order passed after proper analysis of the evidence - Hence does not call for interference - High Court order upheld.*

*s.97 - Right to private defence - Exercise of - Held: Right to private defence should be used only as a shield to avert an attack - It should not be vindictive and cannot be used to retaliate - It cannot be exercised for causing more harm than necessary.*

**The appellants-accused Nos.1 and 2 alongwith other 3 accused, were prosecuted for causing death of one and causing injuries to two (i.e. PWs 1 and 2). Appellants-accused (A-1 and A-2) were convicted by the trial court. A-1 was convicted u/s. 304 and 323 IPC and was sentenced to 10 years RI and six months RI respectively. A-2 was convicted u/s. 304 and 325 IPC and was sentenced to 10 years RI and fine of Rs.500/- with default clause. High Court partly allowed the appeal of the appellants, converting their conviction u/s.304 IPC to conviction u/s. 304 (Part 2) IPC and reducing their sentence of 10 years RI to 3 years.**

**A** In appeal to this Court, the appellants-accused inter alia contended that they had inflicted the injuries, in exercise of right to private defence.

Dismissing the appeal, the Court

**B** HELD: 1. It is the cardinal principle of law that everyone has a right to defend his own person and property but the right of private defence cannot be exercised for causing more harm than necessary or for taking revenge. Such right of private defence must be used as a shield to avert an attack and it should not be vindictive and cannot be used to retaliate. In no case, the right of private defence extends to the inflicting of more harm than it is necessary to inflict, for the purpose of defence. [Para 10] [464-E-G]

**D** 2. On analysis of the evidence on record, it is clear that appellant No.1 (A-1) beat PW-1 (son of the deceased) on his right wrist with a stout stick with the result his hand broke. A-5 also beat him on the right side of the neck with a stout stick. Then the deceased interfered. He tried to rescue his son. Then A-1 gave a blow on his head with stout stick and caused a bleeding injury. To rescue the deceased, PW-2 (wife of deceased) interfered; then A-1 and A-4 beat her with sticks on her hands and back and caused injuries. Though the deceased was already beaten on his head, when his wife was being beaten by A-1 and A-4, he again mustered his strength and tried to interfere, when A-2 poked with a stick on his abdomen and A-3 beat him with a stick on his back and gave two blows. In fact the deceased in his statement before the Police under Ex.P-20 said that A-2 did not simply poke in his abdomen by the side of his naval with a stick but in fact he pounded at his abdomen with the stick. In fact this was the injury that led to the death of the deceased because the intestines were ruptured and bleeding took place internally and serious damage was caused to the

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vital organs inside and caused the death of the deceased. A  
[Para 11] [464-G-H; 465-A-D]

3. The High Court has fully gone into the evidence of the witnesses examined and injuries sustained by the deceased and PW-2, and came to the conclusion that the cumulative effect of the injuries led to the death of the deceased and appellant No.1 being the person, who participated in the commission of the offence, was also, having common intention to attack the deceased. B  
However, the High Court in the facts and circumstances of the case modified the order of the conviction and sentence. In view of the facts and circumstances of the case and the evidence available on record, there is no reason to interfere with the impugned judgment of conviction and sentence passed by the High Court. C  
[Paras 12 and 13] [465-D-G] D

CRIMINAL APPELLATE JURISDICTION : CRIMINAL  
Appeal No. 1132 of 2009.

From the Judgment and Order dated 09.10.2007 of the High Court of Judicature, Andhra Pradesh at Hyderabad in Criminal Appeal No, 1187 of 2002. E

Venkateswara Rao Anumolu, Prabhakar Parnam for the Appellants.

Shishir Pinaki, D. Mahesh Babu, Suchitra Hrangkhawl, Amjid Maqbool, Amit K. Nain, M. Bala Shivudu for the Respondent. F

The Judgment of the Court was delivered by

M.Y. EQBAL, J. 1. The present appeal by special leave is directed against the judgment and order dated 9th October, 2007 passed by the High Court of Judicature of Andhra Pradesh partly allowing Criminal Appeal No. 1187 of 2002 filed by the appellants herein (accused Nos. 1 and 2) by *inter alia* H

- A modifying the conviction of accused Nos. 1 and 2 for the offence under Section 304 IPC into conviction for the offence under Section 304(2) IPC and reducing the sentence of rigorous imprisonment of 10 years to three years in respect of both the accused and the sentence of rigorous imprisonment of four years for the offence under Section 325 IPC in respect of accused No. 2 to one year.

2. The case of the prosecution which led to the conviction of accused Nos. 1 and 2 is that the deceased Boddur Maraiah and accused No. 2 were having prior disputes between them. The son of said accused loved the daughter of the deceased. As the elders did not agree to the proposal, the deceased married his daughter to some other person. Even after her marriage, the son of accused used to go to her house and tried to create problems in her married life, because of which the son of accused was beaten by the deceased and his family members which became the subject matter of a criminal case. Thus, it was alleged that there was inimical term between the two families. On 2.11.1998 at about 5.30 p.m., while accused Nos. 1 to 5 (A-1 to A-5) (accused No. 4 is son of accused No. 2; accused No. 2 is the nearest relative of accused No. 1; accused No. 3 is his son; and accused No. 5 is a close relative of accused Nos. 1 to 4) were returning to their village after finishing their fishing work and when they reached near the cattle shed of the deceased, they heard PW-2 (wife of deceased) abusing her cattle sarcastically. All are stated to be residents of Ramannamodi. The accused suspected that PW-2 was abusing them. On PW-2 being questioned by A-2 as to why she was abusing them, the deceased interfered and attacked A-2. A-1 also interfered and the deceased beat him whereupon A-1 beat the deceased on his head with a stick and induced A-2 to A-5 to beat the deceased. A-2 beat the deceased by poking against his abdomen with stick near his naval, A-3 beat him on his back with a stick, A-1 and A-4 beat PW-2 with sticks and caused injuries and A-1 and A-4 beat PW-1 (son of deceased) on his left hand wrist and on his neck

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with sticks. After beating the deceased, PW-1 and PW-2, the accused ran away from the place of occurrence. Later PW-1 went to police station and registered a complaint (Ex.P-13) and a case under Section 324/34 IPC was started. The deceased, PW-1 and PW-2 were sent to the Government Headquarters Hospital, Machilipatnam. After the deceased succumbed to injuries on 4.11.1998 in the hospital, the police altered the FIR to Section 302 IPC and took up investigation, held inquest over the dead body, observed the scene of offence, conducted panchnama, got the post mortem examination done and after receipt of post mortem report laid the chargesheet under Section 302/34 IPC against A-1 and A-2, under Section 325 against A-2, under Section 323 against A-1, A-4 and A-5 and under Section 114 against A-5. In support of its case, the prosecution examined PWs 1 to 14, marked Exhibits P-1 to P-23 and also MOs 1 to 26. No defence witness was examined but Exhibits D-1 to D-9 were marked on their side.

3. PW-9 Dr. K. Sanjeevarao who held inquest over the dead body and issued post mortem certificate opined that the deceased died of shock due to rupture of mesenteric vessel and damage to the intestines. The doctor stated that the injuries mentioned in the certificate would have been caused with sticks like MOs 1 to 5 and that the internal injuries 2 and 3 were sufficient to cause the death in the ordinary course of nature. The following external injuries were found on the dead body:

1. A three sutured injury 1 ½" in length on the right parietal region.
2. A blue black abrasion 3" x ¼ " on the right shoulder.
3. A blue black abrasion 1" x ¼ " over the left loin.
4. A black abrasion 1" x ½ " on the back of right lumber region.
5. A blue black abrasion 1 ½ " x 1" on the back and left lower part of the chest.

A 4. On internal examination, the doctor found (1) about 2 ½  
litre of blood present in the abdominal cavity and ½ litre of blood  
present in the pelvic cavity, hemoperitoneum present and all the  
intestines congested; (2) bluish contusion 6" x 1" on the middle  
third of small intestine; (3) the mesentance vessels ruptured and  
B the entire mesentery blood stained; (4) three bluish blood clots  
each 30 grams on the mecentary near the superior mesenteric  
artery; (5) all the internal organs like liver, both the lungs, spleen  
and both the kidneys congested; (6) the stomach empty and  
its mucosa congested; (7) the brain and its meninges congested;  
C (8) hyoid bone intact; (9) urinary bladder and the gall bladder  
empty; and (10) the chambers of the heart empty. The doctor  
opined that the deceased appeared to have died of shock due  
to rupture of mesenteric vessels and contusion of the intestines  
and death would have been occurred within 24 hours prior to  
D the *post mortem* examination and Ex.P-7 is the *post mortem*  
certificate he issued. The injuries mentioned in Ex.P-7 would  
have been caused with sticks like MOs.1 to 5 and that the  
internal injuries 2 and 3 are sufficient to cause the death in the  
ordinary course of nature.

E 5. As regards injuries to PW-1 and PW-2, PW-8 Dr. M.  
Polaiah who medically examined PW-1 and PW-2 stated in his  
deposition that he was of the opinion that injury No. 1 i.e.  
"Swelling deformity of lower third of left forearm. Tender"  
caused to PW-1 was grievous in nature and injury No. 2 i.e.  
F "Abrasion of 1" x ¼" over the anterior of triangle of left side of  
neck. Bleeding present" was simple in nature and those injuries  
could have been caused with sticks. As regards injuries i.e.  
"Swelling deformity of left hand and Contusion of 1" x 2" over  
right shoulder blade", the doctor opined that the said injuries  
G were simple in nature and could have been caused with sticks  
as alleged.

H 6. The trial court on consideration of testimony of the  
witnesses held that a case has been made out against A-1 and  
A-2 (appellants herein) finding them guilty for the offences under  
Sections 304/34, 324/34 and 325 IPC. Accordingly, they were

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convicted for the offence under Section 304 IPC and sentenced to undergo rigorous imprisonment for 10 years and in default to suffer simple imprisonment for three months. A-1 was further convicted for the offence under Section 323 IPC and sentenced to undergo rigorous imprisonment for six months. A-2 was further convicted under Section 325 IPC and sentenced to undergo rigorous imprisonment for four years and also to pay a fine of Rs.500/- and in default to suffer simple imprisonment for two months. A-4 and A-5 were sentenced to pay fine of Rs.1,000/- each, in default to suffer simple imprisonment for two months. All the sentences imposed on respective accused were directed to run concurrently. A-3 had died on 5.12.1998 due to ill health while under judicial custody. In arriving at its conclusion as regards conviction and sentence of A-1 and A-2 (appellants herein), the trial court gave the following reasoning:

"21. ....The oral evidence and medical evidence on record clinchingly proved that on account of injuries caused by A-1 and A-2 the deceased died, especially the injuries caused by A-2. But the common intention of A-1 and A-2 in beating the deceased is clear. Whether they intended to kill him is doubtful, though PW-1 stated in his evidence that the accused uttering 'SACHADU NA KODUKU' went away because that material aspect was not mentioned by him in Ex. P-1 or he stated the same before the Police. The deceased also did not mention in Ex.P-20 that the accused left the scene of offence uttering so. Therefore, the intention to cause death to the deceased on the part of A-1 and A-2 cannot be inferred from the circumstances but the subtle situation led each party to self provocation. Consequently A-1 and A-3 beat the deceased as well as PWs-1 and 2. In fact on both sides there was no intention or preparation for the quarrel. It was a sudden and unexpected quarrel that arose on account of bitter enmity. Passions roused on seeing each other. Both sides plunged into a free fight. So it can be safely held that A-1

A and A-2 in furtherance of common intention beat the deceased Maraiiah which injuries caused his death in the ordinary course of nature. It cannot be held that they have committed the offence u/s 302 r/w section 34 IPC, but they have committed an offence punishable u/s 304 r/w section 34 IPC, in other words culpable homicide not amounting to murder.

22. ... it has been established beyond doubt that on account of the injury caused by A-1, the left hand of PW-1 was broken. Not only a reading of Ex.P-1 but also a reading of Ex.P-20 coupled with the oral and medical evidence on record this offence against A-1. u/s 325 IPC has been established.

xxx xxx xxx

24. It is the case of the prosecution that A-1 and A-4 beat PW-2 and caused her two simple injuries with sticks. PW-2 received injuries on her left hand and right shoulder blade. The evidence of PW-8 and the wound certificate Ex. P-6 corroborates the evidence of PW-1 and PW-2. In Ex. P-1 and P-20 also these injuries caused to PW-2 were attributed to A-1 and A-4. Thus, it has been established by the prosecution that A-1 and A-4 beat PW-2 and caused injuries to her by beating with sticks punishable u/s 323 IPC."

7. Aggrieved by the judgment of the trial court, A-1 and A-2 (appellants herein) preferred an appeal before the High Court and contended that as their guilt was not proved beyond all reasonable doubt, their conviction and sentence ought to be set aside. The High Court after going through the entire material on record held that the lower court gave sufficient reasons as to why the respective accused were convicted for the offences under various Sections of IPC; cumulative effect of the injuries led to the death of the deceased and A-1 being the person who participated in the commission of the offence was also having



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common intention to attack the deceased; there was no ground A  
to interfere with the conviction of the accused for the offences  
under Sections 304, 325 and 323 IPC; and conviction under  
Section 304 could be brought under Section 304(2) IPC and  
accordingly modified the same. After taking into consideration B  
the motive behind the incident, the nature of weapons used and  
the circumstances, the High Court was of the view that the  
accused did not use sharp edged weapons to kill the  
deceased but they caused injuries with a knowledge that they  
are likely to cause the death. In the result, the appeal of A-1  
and A-2 (appellants herein) was partly allowed by the High Court C  
as mentioned hereinbefore. Finally the High Court held:-

"By taking into consideration the motive behind the  
incident, the nature of weapons used and the  
circumstances explained by the learned defence counsel,  
I am of the view that the accused did not use sharp edged D  
weapons to kill the deceased, but they caused injuries with  
a knowledge that they are likely to cause the death. As the  
offence under Section 304 I.P.C. was brought under  
Section 304(2) I.P.C., the sentence of imprisonment  
imposed on the accused is excessive. Therefore, I am E  
inclined to reduce the sentence imposed against the  
accused for the offence under Section 325 I.P.C.  
Therefore, the sentence imposed against Accused No.2  
for the offence under Section 325 I.P.C. is reduced.

In the result, the appeal is allowed in part. The F  
conviction of Accused Nos. 1 and 2 for the offence under  
Section 304 I.P.C., is modified into conviction for the  
offence under Section 304(2) I.P.C. Regarding Rigorous  
Imprisonment, it is reduced to rigorous Imprisonment of G  
three years to each of the accused. The fine and default  
sentence remain un-altered. The conviction of Accused  
No.1 for the offence under Section 323 I.P.C., and the  
sentence of Rigorous Imprisonment for six months is  
confirmed. Conviction of Accused No.2 for the offence H  
under Section 325 I.P.C., is confirmed, but the sentence

A of rigorous imprisonment of four years is reduced to  
 Rigorous Imprisonment of one year. The fine amount  
 remains un-altered. All the sentences of imprisonment  
 against each of the accused shall run concurrently."

B 8. Mr. Venkateswara Rao Anumolu, learned counsel  
 appearing for the appellants assailed the impugned judgment  
 of the High Court mainly on the ground that the conviction and  
 sentence cannot be sustained as the injuries were inflicted by  
 the appellants while exercising their right of private defence.  
 C Admittedly, the accused -appellants were on inimical terms with  
 the deceased and the witnesses. Learned counsel drew our  
 attention to the injuries sustained by the parties and the report  
 of the doctor and submitted that in the facts and circumstances  
 of the case, the impugned judgment of conviction is liable to  
 be set aside.

D 9. Mr. Shishir Pinaki, learned counsel appearing for the  
 respondent, on the other hand, submitted that the evidence of  
 the prosecution witnesses including the injured witnesses and  
 the injuries inflicted on the deceased completely ruled out the  
 E application of right of private defence.

10. It is the cardinal principle of law that everyone has a  
 right to defend his own person and property but the right of  
 private defence cannot be exercised for causing more harm  
 than necessary or for taking revenge. Such right of private  
 F defence must be used as a shield to avert an attack and it  
 should not be vindictive and cannot be used to retaliate. In no  
 case the right of private of defence extends to the inflicting of  
 more harm than it is necessary to inflict for the purpose of  
 defence.

G 11. From analyzing the evidence on record which has  
 already been noticed by the trial court, it is clear that appellant  
 No.1(A-1) beat PW-1 on his right wrist with a stout stick with  
 the result his hand broken. A-5 also beat him on the right side  
 H of the neck with a stout stick. Then the deceased interfered.

He tried to rescue his son. Then A-1 gave a blow on his head with stout stick and caused a bleeding injury. To rescue the deceased, PW-2 interfered; then A-1 and A-4 beat her with sticks on her hands and back and caused injuries. Though the deceased was already beaten on his head when his wife was being beaten by A-1 and A-4, he again mustered his strength and tried to interfere when A-2 poked with a stick on his abdomen and A-3 beat him with a stick on his back and gave two blows. In fact the deceased in his statement before the Police under Ex.P-20 said that A-2 did not simply poke in his abdomen by the side of his naval with a stick but in fact he pounded at his abdomen with the stick. In other words, in vernacular 'KULLA BODICHI NADU' in fact this is the injury that led to the death of the deceased because the intestines were ruptured and bleeding took place internally and serious damage was caused to the vital organs inside and caused the death of the deceased.

12. The High Court has fully gone into the evidence of the witnesses examined and injuries sustained by the deceased and PW-2 and came to the conclusion that the cumulative effect of the injuries led to the death of the deceased and appellant No.1 being the person, who participated in the commission of the offence, was also having common intention to attack the deceased. However, the High Court in the facts and circumstances of the case modified the order of the conviction and sentence.

13. Considering the entire facts and circumstances of the case and the evidence available on record, we do not find any reason to interfere with the impugned judgment of conviction and sentence passed by the High Court.

14. For the reasons aforesaid, there is no merit in this appeal, which is accordingly dismissed. The bail bonds of the accused-appellants stand cancelled. They shall surrender forthwith to serve out the remaining period of the sentence.

K.K.T.

Appeal dismissed.